IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5710 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJEN M SHAH CHAIRMAN & M.D

Versus

CHAIRMAN & MANAGING DIRECTOR NEW INDIA ASSURANCE CO LTD

Appearance:

MR AH MEHTA with MR MD RANA for Petitioner No. 1
NOTICE UNSERVED for Respondent No. 1
NOTICE SERVED for Respondent No. 2
SERVED BY RPAD - (N) for Respondent No. 3
MR PV NANAVATI for Respondent No. 4
MR VIBHUTI NANAVATI for Respondent No. 4
DELETED for Respondent No. 5

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 29/07/2002

CAV JUDGEMENT

1. The petitioner, an individual has challenged the decision (Annexure-A) of the New India Assurance Company

Limited depriving the petitioner of a Personal Accident Policy to the tune of Rs.3 crore.

2. Notice was issued on 18-12-2001. Thereafter the pleadings have been completed by both the sides.

Rule. Mr.P.V.Nanavati, learned advocate appearing on behalf of the respondents waives service of rule.

3. On 18-05-2000 the petitioner addressed a letter to Respondent No.4 seeking Personal Accident Policy cover for a sum of Rs.3 crore for himself. The said letter was accompanied by a blank cheque dated 10-05-2000 drawn in favour of Respondent No.4 so that necessary amount of premium could be paid for the policy that may be issued. It is the say of the petitioner that the said letter was not replied to but there was some telephonic discussion conveying the impression that Respondent No.4 was not willing to issue coverage of Rs.3 crore as asked for by the petitioner, but was willing to cover a risk of only Rs.1.5 crore. The petitioner further states that as the petitioner had to go out of India urgently, he agreed to obtain cover of a sum of Rs.1.5 crore. It is pertinent to note that the policy covered the period from 02-06-2000 to 01-06-2001. On 21-11-2002 the petitioner addressed a letter to Respondent No.4 pointing out various sources of income of the petitioner and on basis of the same it was contended that the petitioner was entitled to a risk cover of Rs.3 crore. According to the petitioner this letter also remained unreplied. Thereafter it appears that the petitioner made a representation dated 23-12-2000 through his advocate. It is pertinent to note that in the said representation reference is made to rejection letter dated 24-05-2000. The said representation came to be rejected on 24-01-2001 (Annexure-A).

4. Mr.A.H.Mehta, learned senior advocate appearing with Mr.M.D.Rana on behalf of the petitioner contended that the respondent was a 'State' within the meaning of Article 12 of the Constitution of India and it was incumbent upon the respondent to act in accordance with law and the policy laid down for issuance of Personal Accident Policy, that principles of natural justice had to be observed and the discretion of selling a policy had to be exercised in a reasonable and fair manner without being arbitrary. It was submitted that though the respondent had referred to guidelines of the Company in its communication dated 24-01-2001, the said guidelines are never made available to the petitioner nor have they been placed before the Court so as to enable the Court to

assess as to whether the decision had been arrived at in accordance with the guidelines. In support of the submissions made, reliance was placed on the Supreme Court decision in the case of Air India Statutory Corporation Vs. United Labour Union and Others, AIR 1997 Supreme Court 645 with special reference to paragraph 26 at page 663.

5. As against this Mr.P.V.Nanavati, learned advocate appearing on behalf of the respondents submitted that the petition be held to be not maintainable because the period of policy which was issued had come to an end and the petition had become infructuous. In the alternative it was contended that purchase and sale of insurance was within the realm of contract and the petitioner had made a proposal for purchasing a policy of Rs.3 crore but the respondent had thought it fit to make a counter proposal by agreeing to issue a policy for a sum of Rs.1.5 crore and the said counter proposal had been accepted by the petitioner resulting into a contract for a fixed term which had come to an end on 01-06-2001. According to Mr.Nanavati, therefore, it was not open to the petitioner to make any grievance at this stage. In the alternative it was submitted that what would be the sum for which a risk cover should be issued was a business decision dependent upon underwriting guidelines as well as the norms for re-insurance. That income criteria was not the sole criterion and gainful income criterion was one of the factors which went into decision making; that the respondent authorities had taken into consideration other factors like age, physical fitness, other insurance coverage and after having considered all the aspects a decision had been arrived at which was based on business prudence and the Court should not interfere.

6. Mr.Nanavati invited attention of the Court to the decision of Steel Authority of India Ltd. & Ors. Vs. National Union Water Front Workers & Ors., AIR 2001 Supreme Court 3527 and submitted that the decision in case of Air India Statutory Corporation Vs. United Labour Union and Others (supra) cited by the petitioner had been over ruled by the Larger Bench, as can be seen in paragraphs 101 and 102 at page 3560 of the latter decision. He also relied upon an unreported decision of this Court in the case of Prabhudasbhai A. Parikh Vs. Union of India & Ors. rendered on 31-07-1995 in Special Civil Application No.6328 of 1995.

7. In rejoinder, Mr.Mehta for the petitioner stated that the decision cited by Mr.Nanavati had to be read in the context in which it was delivered. In so far as the

unreported decision of this Court was concerned, it was submitted by Mr.Mehta that the same pertains to a policy of Mediclaim which would cover only such illnesses as mentioned and hence could not be relied upon by the respondents.

8. The petition requires to be rejected for the reasons which follow. It is apparent that the grievance of the petitioner does not survive in as much as the period for which the insurance covered was sought is already over on 01-06-2001. Not only that, it appears that the petitioner has also obtained a fresh Personal Accident Insurance Policy for subsequent period commencing from 02-06-2001 to 01-06-2002 (Annexure-F), and such subsequent policy also is for a sum of Rs.1.5 crore only.

9. The say of the petitioner that his letter of 18-05-2000 had not been replied is also factually incorrect. This is apparent from the reference to rejection letter dated 24-05-2000, the reference which appears in paragraph 3 of the petition as well as in the representation dated 23-12-2000 (Annexure-B). In fact, the rejection letter dated 24-05-2000 is not available on record though it is stated to be at Annexure-A to the petition in paragraph 3 of the petition. What is available at Annexure-A is a letter dated 24-01-2001

which is in response to the petitioner's representation dated 23-12-2000. Thus the petitioner has approached the Court, to say the least, in a very casual manner.

10. As to what should be the approach of the Court in such matters is very succinctly laid down by the Division Bench of this Court in the unreported decision in the case of Prabhudasbhai A. Parikh Vs. Union of India & Ors. (supra) :

" As insurance is a contract between two parties and it is not possible for a Court exercising its jurisdiction under Article 226 of the Constitution to compel the State or a statutory authority to enter into a contract unless and until, by law, they are required to do so. There is no legal provision which has been brought to our notice which can compel or which makes it obligatory on respondents No.3 to 5 to extend such a facility to cover the cases of mentally retarded persons. While we agree with the counsel for the petitioner that the State should provide some sort of a social security or

protection to the handicapped, including the mentally handicapped, but this is in the realm of a policy decision to be taken by the State and a Court under Article 226 of Constitution, cannot compel the State to take a policy decision in a particular manner. It was contended by the learned counsel for the petitioner that the reason given for not extending the benefit of Mediclaim was the incapacity of the proposer. it is submitted by Shri Vakharia that the father of the mentally retarded person is willing to sign and undertake the responsibility of paying the premium and the insurance should cover the ailments which are like the ailments of any other normal person like typhoid, malaria, etc. and not the ailments relating to mental illness.

Apart from the fact that the scheme Mediclaim does not expressly include the case of a mentally retarded person, it is to be borne in mind that the Insurance Companies may legitimately contend that a mentally retarded person will not take due care and caution against the contracting of illness which a normal person would take. Under these circumstances, the Insurance Companies would not regard this is a prudent business risk to take. "

11. However, before parting it is necessary to place on record one disturbing feature as regards the conduct of the respondents. The respondents have referred to "guidelines of the Company" or "underwriting guidelines" but no such guidelines have come on record. In the present day context, when the respondent Company is facing competition, as stated by it in its affidavit, from different private insurance companies, it is necessary for the respondent - Company to ensure that the customer is informed all the criteria and the factors which go into decision making. The process of decision making would be important and what are the factors which go into that process requires to be stated. Suffice it to state that, in absence of any specific criterion being adopted on a uniform basis, the decision arrived at may become liable to challenge or more importantly, the respondent Company may loose out business to the competitors.

12. The petition stands disposed off accordingly. Rule discharged. There shall be no order as to costs.

Sd/-

(D.A.Mehta, J)

'Bhavesh'